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IN THE

Supreme Court of the United States

OCTOBER TERM [redacted] 1965

No. 509

A/S SKAUGAAS (I. M. SKAUGEN), as Owners of the Norwegian Motor Vessel SKAUSTRAND,
Petitioner,

v.

DREDGE CARTEGENA and STANDARD DREDGING COMPANY,
Respondents.

REPLY BRIEF ON PETITION FOR CERTIORARI

CHARLES S. HAIGHT,
Counsel for Petitioner.

CARLYLE BARTON, JR.,
DONALD A. KRACH,
CHARLES S. HAIGHT, JR.,
Of Counsel.

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REPLY BRIEF ON PETITION FOR CERTIORARI

Petitioner submits this reply brief in accordance with Rule 24(4) of this Court.

1. In their brief in opposition to the Petition for Certiorari, respondents state (page 3):

> "After the two-blast exchange, *Cartegena's* lookout went back to his station astern (Appellant's Appendix, p. App. 76) from where Skaustrand was approaching, and her leverman remained at his post forward (p. 6b), so that both Thirtle and Skaustrand *remained under observation.*" (Emphasis added)

This purported statement of fact is intended as an answer to the charge, made in the Petition, at page 4, that after signalling a direction to the *Thirtle* to come out of Curtis Bay Channel and pass the dredge, "those on board the

Cartegena ceased observing the relative approaches of the *Thirtle* and *Skaustrand.*"

Respondents' quoted statement distorts the evidence. The leverman remained at his post in the lever room facing forward and watched the *Thirtle* pass the dredge; however, he could not see the upbound *Skaustrand* at all, and could not even see the *Thirtle* at collision (Appellant's Appendix, at App. 90-91). As for the lookout, the testimony which respondent cites describes his activities, after the two-blast exchange, as follows (Appellant's Appendix, at App. 76):

> "Going back to my station astern of the dredge, when I went back there, I heard three whistles, and I run down and I asked Mr. LeBlanc, "What was the three whistles?" And while I was asking him, I hear three more, so I picked up my field glasses and I jumped up as I went to the stern, that's when it happened. They collided."

It is equally apparent from this testimony that neither the lookout nor the leverman was observing the *relative approaches* of the two vessels, and the developing danger.

2. On the law, respondents rely upon *Southern Pacific Co.* v. *Haglund*, 277 U. S. 304 (1928). Respondents misstate (probably inadvertently)* the charge that was made against the stationary vessel in that case. It was not, as respondents assert, that the stationary vessel "should have sounded a warning to one of two vessels approaching in the channel from opposite directions"; the contention was

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*We confirm that the reference, at page 7 of the Petition, to a dredge being a "vessel" which must exercise proper seamanship, should be to the decision of this Court in *The Virginia Ehrmann and the Agnese*, and not *The Ariadne*.

that the stationary vessel should be held in fault "in not having a lookout", 277 U. S. at p. 310. The stationary vessel in the *Southern Pacific Company* case was a steamship which was being held "dead" across a channel by a tug; the tug *was* maintaining a competent lookout, and sounded proper whistle signals. In the case at bar, the *Cartegena* was accompanied by no such tug; and the Petition herein charges that, having failed to maintain a *proper* lookout, she consequently failed to give the danger signal which the Court of Appeals itself recognized was called for by the circumstances.

3. The decision of the Court of Appeals, contrary to respondents' assertions, does indeed relieve dredges of a duty to maintain a proper lookout, to observe the relative approaches of other vessels, and to give a warning signal as required by developing danger.

Therefore the Petition does present a question of importance to maritime safety, and warrants review by this Court. The question is of vital importance at the present time, in view of the great amount of dredging which is now and will be carried on in developing harbors of the United States for continually larger vessels.

Respectfully submitted,

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September 29, 1965.